

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10896-2018 (O&M)
Date of Decision:02.04.2024

Jarnail Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. R.K. Arora, Advocate, for the petitioner.

Mr. Satnampreet Singh, DAG, Punjab.

AMAN CHAUDHARY, J.

1. The prayer of the petitioner is for grant of promotion to the post of Senior Assistant as per Rules/Instructions dated 08.05.2017, Annexure P-5, from the due date or prior to his retirement on 30.04.2018, with all consequential benefits.
2. Learned counsel submits that the petitioner, belonging to the Schedule Caste category and working on the post of Junior Assistant, was due for promotion as a Senior Assistant, his name figuring at Sr. No.89 in the seniority list, for which, vide letter dated 25.04.2016, Annexure P-1, his service record was sought. His case was even recommended by the Chief Agriculture Officer, Ludhiana vide letters dated 10.05.2016 and 28.11.2016, Annexures P-2 and P-3 respectively, addressed to Director Agriculture, Punjab. However, no DPC meeting was conducted, which is in violation of Instructions dated 08.05.2017, Annexure P-5 issued by the Department, regarding holding the same at regular intervals. He also made two representations for consideration of his case on

priority basis on 09.11.2017 and 06.04.2018, in wake of his impending superannuation, but to no avail. Thus, prior to his superannuation on 30.04.2018, he filed the present petition, during pendency of which, persons junior to him were promoted vide order dated 27.09.2018. Reliance is placed upon **Prem Kumar Aggarwal vs. State of Punjab and others**, LPA-1703-2023, decided on 30.01.2024 and **Iqbal Singh vs. State of Punjab and others** CWP-27365-2016, decided on 12.02.2024.

3. On the contrary, learned State counsel contends that there was no vacant post of Senior Assistant against which the petitioner could be promoted while he was in service and that subsequently, he had already superannuated at the time of promotion of his junior.

4. Heard learned counsel on either side.

5. Proceeding to adjudicate the matter from the standpoint of it being projected, that Instructions dated 08.05.2017, issued by the Department of Personnel, State of Punjab, mandated all Head of the Departments to ensure conduct of one meeting of the DPC in quarter of the calendar year so that the employees may get promotion. The petitioner being eligible for promotion, his case was recommended twice over but DPC was not convened and two of his representations submitted seeking prompt action, him nearing the age of superannuation, yielded no result and finally he retired on 30.04.2018.

6. There is no denying the fact that Sukhpreet Singh and Davinder Singh, being at seniority Nos.90 and 93, respectively, and thus junior to the petitioner were promoted within just five months of his retirement, thereby negating the plea taken in the written statement of posts being not available.

Whilst dealing with a similar set of circumstances, Hon'ble the Supreme Court in

MP Singh Bargoti vs. State of Madhya Pradesh, 2015 AIR SC 556, observed that the appellant therein was never considered by the DPC till he was in service or even thereafter when person junior to him in the combined gradation list was considered on basis of another subsequent gradation list and promoted and held that he suffered only on account of passage of time or innocuous delay and was held entitled to notional promotion and post retiral benefits by recalculating the same.

7. The petitioner in **Om Parkash Uda vs. State of Haryana and Others**, 2016 SCC OnLine P&H 2282, being due for promotion to the post of Joint Director and as per government instructions dated 20.05.2010, DPC was to meet for all anticipated vacancies under promotion quota up to 31st December of next year in November every year, i.e. before 31.03.2011. Despite the recommendation being made on 19.10.2011, he was made to retire on 31.10.2011 and was informed that he could not be promoted prior to the date of his retirement as a meeting of the DPC could not be convened on account of certain administrative reasons. However, after he retired on 31.10.2011, the DPC was held on 27.12.2011, in which, name of one Mr. Ashok Kumar, Deputy Director, was recommended to officiate as Joint Director, who was two steps down in seniority list of Deputy Directors.

8. It would be worthwhile to refer to **Chaman Lal Lakhanpal vs. UPSC**, 1999(1) SCT 175, wherein the issue was that the petitioner, aggrieved against his non-consideration for promotion, had unsuccessfully challenged the same before the Central Administrative Tribunal, claiming that he became eligible to be considered for promotion to the Indian Administrative Service in the year 1987. However in the year 1992, meeting of DPC to be constituted under the

Indian Administrative Service (Appointment by Promotion) Regulations, 1995, was not held, though prior to it was, wherein the persons senior to him were considered. Thereafter, even from the year 1994-95 onwards the meeting was not held, consequently, his consideration did not take place and petitioner was to retire on 30.09.1998 from service, the Tribunal on that premise denied to give any direction that by the time, it would be held, he would stand retired. The Division Bench of this Court while allowing the petition, observed thus:

“5. It is the admitted position that the petitioner was eligible to be considered for promotion in the year 1994-95. It is also not disputed that his claim has not been considered. Thus, the petitioner, even if he was approaching the date of retirement when the matter was pending before the Tribunal, had a right to be considered with effect from the due date and on being found suitable, he could be fictionally granted the relief which had been denied to him for no fault of his. The relief could not be denied to him merely because a statutory authority viz. the committee as constituted under the Indian Administrative Service (Appointment by Promotion) Regulations, 1995 had not met. The respondents cannot be permitted to take advantage of their own wrong. By sleeping over the matter, they cannot defeat the rights of a citizen available to him under the Constitution as well as the statutory provisions of the regulations.

6. The right to equality of opportunity in matters of promotion is guaranteed under Article 16 of the Constitution. The right cannot be stifled by an arbitrary failure to perform the duty imposed by statutory regulations. By merely choosing to avoid the meeting, a citizen cannot be denied the right to be considered.

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9. It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules.”

9. In **Vijay Kumar Bansal vs. State of Punjab**, CWP-5148-2020, decided on 13.01.2023, the petitioner was granted notional promotion by this Court, in view of the fact that the proposal for his promotion was made while he was in regular service, but DPC had not been held and he stood retired. Thereafter, it was held that the benefit was wrongly not extended to him on the premise of him having retired prior to the approval by the Department.

10. Division Bench of this Court in **State of Punjab vs. Jagjit Singh and another**, 2018(4) SCT 549, had observed that the State cannot take undue advantage of their own inaction and wrongs in granting regular promotions, which was a legitimate expectations in service career and in the meantime, the employees had unfortunately retired without getting formal tag of a regular promotion and directed that promotion be granted retrospectively but on notional basis only and they be entitled to fixation of their pension including other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts.

11. The contours of the legal controversy, which arose for consideration in **Prem Kumar Aggarwal** (supra) were that the appellant being eligible for promotion to the post of District Treasury Officer, however, DPC was not convened despite there being numerous Instructions dated 21.11.1995 upto 08.05.2017 by the Government of Punjab. He even submitted a number of representations for expediting the same, but retired without having been considered. The Division Bench of this Court, whilst discharging its bounden duty of securing justice, directed the respondents to consider him for notional promotion to the said post for the purpose of pensionary benefits. Analogously, in **Iqbal Singh** (supra) also, keeping in view the similar nature of the issue at hand, relief was granted.

12. Actions of the State must be reasonable and fair and as observed by Hon'ble the Supreme Court in **State of Maharashtra vs. Jagannath Achyut Karandikar**, 1989 Supp (1) SCC 393, no employee should be made to suffer, for the default of the Department.

13. Recapitulating the exposition of law by the Constitution Bench of Hon'ble the Supreme Court in **Ajit Singh vs. State of Punjab** (1999) 7 SCC 209, while laying emphasis on Articles 14 and 16(1) of the Constitution of India, it was held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her fundamental right. The same has been reiterated in **Ajay Kumar Shukla and Ors. vs. Arvind Rai and Ors**, 2021 SCC OnLine SC 1195.

14. On a thoughtful consideration having been given to the overall conspectus of facts and circumstances of the case and in light of the afore-referred abounding judicial pronouncements, it is directed to consider the petitioner for promotion as Senior Assistant from the due date or at the least from the date his juniors were promoted, only on notional basis for the purpose of pensionary benefits, within a period of two months from when a web-print of this judgment is received by the competent authority.

(AMAN CHAUDHARY)
JUDGE

April 02, 2024
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Whether speaking : Yes / No

Whether reportable : Yes / No